

## Administration and Accountability



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Reform Proposals  
Submitted by Members of the Public

David Fadness, 4/10/06

1. All members of the city council and all elected, appointed, and/or otherwise employed administrative city staff must sign a notarized affidavit attesting to having read and understood the Sunshine Ordinance. Affidavits must be renewed for every revision in the ordinance and for every new term in office. Signed affidavits must be maintained in the City Clerk's office during the term of office or employment and for at least four years thereafter.
2. An eleven-member Sunshine Ordinance Task Force (TF) shall be appointed by the city council for two-year staggered terms, with a three term limit. No member is eligible for reappointment until two years after vacating or fulfillment of a three-term limit. Members of the Task Force shall serve without compensation. Members may be dismissed for cause by majority vote of the TF, a quorum being present at a noticed meeting, but not by the City Council. In case of a vacancy, the TF Chair shall request and the City Council shall act within 60 days to appoint a replacement representing the same member category. In no case shall failure to appoint TF members result in an inability to meet a quorum. There shall be no alternate TF members.
3. One Sunshine Ordinance TF member shall be appointed by the city council from two nominees for each seat recommended by each of the following entities:
  - Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government, nominated by the League of Women Voters and/or the Civil Grand Jury.
  - One member shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists.
  - One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media.
  - One member shall be appointed from individuals whose names have been submitted by the San Jose Chamber of Commerce.
  - One member shall be appointed from attorneys whose names have been submitted by the local chapter of the Bar Association, giving preference to candidates with knowledge in First Amendment, Brown Act, and related public meeting law.

- One member shall be appointed from individuals whose names have been submitted by an organized local taxpayer organization.
  - One shall be a member of the public experienced in consumer advocacy, nominated by the League of Women Voters and/or the Civil Grand Jury.
  - One member shall be appointed from faculty members whose names have been submitted by San Jose State University.
  - The Clerk of the City Council or his/her designee and the City Attorney Council or his/her designee shall serve as staff to and attend all meetings of the TF. All nominees must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Care must be exercised to avoid appointments that may result in conflicts of interest.
4. The TF shall select and hire on retainer an attorney from the private sector. This attorney shall have experience in First Amendment, Brown Act, and related public meeting law. He/she will serve at the pleasure of the TF, being hired or terminated by a majority vote of the TF, a quorum being present at a noticed meeting.
  5. The City Council shall annually fund the TF attorney's retainer fees for an amount not to exceed 2080 hours at prevailing rates established by the local Bar Association. Fees in excess of this allocation shall be budgeted in advance, approved by a 2/3+ majority of the TF, a quorum being present at a noticed meeting, and be recommended for approval to the City Council. Any such request shall be considered by the City Council at its next duly noticed public meeting and may be denied for cause only by a 2/3+ majority vote of the Council.
  6. Any member of the public (including TF members themselves) may report any suspected willful, purposive, flagrant, and/or knowing offense or pattern of repeated violations of the Sunshine Ordinance to the TF. Any such reports to one TF or more member shall be shared with the TF at a noticed regular meeting.
  7. The plaintiff's identity will be kept confidential unless confidentiality is formally waived.
  8. The TF will assess at a noticed regular meeting any and all reports of suspected violations, voting after due deliberation whether to accept or reject the claim. The TF may subpoena testimony and/or records supporting its examination.
  9. If the TF accepts as valid a complaint, after due deliberation at a noticed regular meeting, the TF may upon a majority vote call upon its attorney to evaluate the possibility of Sunshine Ordinance violation. Unless agreed to in advance by the TF, a maximum fee of 8 hours shall be allowed for each consultation/report.
  10. If the TF attorney finds that a probable violation of the Sunshine Ordinance has been committed, the TF may upon a 2/3 vote at a noticed regular meeting file a formal complaint with the District Attorney. Unless agreed to in advance by the TF, a maximum fee of 8 hours shall be allowed for each filing with the District Attorney.
  11. A finding of guilt by the District Attorney shall at minimum be punishable by immediate removal from office and/or employment and forfeiture of all pay and benefits. If found guilty, a defendant

who has been on administrative leave during examination of guilt shall reimburse the City all pay and benefits paid while on leave. A convicted violator shall thereafter not be allowed to hold elective office in the City of San Jose or be eligible for employment by the City or any of its vendors.

12. There must be specified degrees of punishment—including jail—for flagrant and willful violators. (I don't know what the law allows.)

**David Parker, August 31, 2006**

Sunshine Task Force Establishment:

- There is hereby established a task force to be known as the Sunshine Task Force consisting of eleven voting members appointed. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government.

Seat 1: Journalist, submitted by Society of Professional Journalists

Seat 2: Attorney, submitted by Society of Professional Journalists

Seat 3: Journalist, submitted by a racial/ethnic/sexual orientation minority owned news organization. U.S. Citizenship shall not be a requirement for this seat.

Seat 4: Attorney, Submitted by Santa Clara Bar Association, shall have a background in law as it relates to government ethics and shall have a background in public information and public meetings. Shall not be an employee of the City of San Jose during appointment.

Seat 5: Member of Public, Experienced in Consumer Advocacy, submitted by a Consumer Advocacy organization.

Seat 6: Member of Public, Submitted by Santa Clara County Civil Grand Jury.

Seat 7: Member of Public, Submitted by the League of Women Voters

Seat 8: Member of Public, Submitted by neighborhood organizations, Demonstrated interest in citizen access and participation in local government.

Seat 9: City Council nomination, Demonstrated interest in citizen access and participation in local government

Seat 10: City Council nomination, Demonstrated interest in citizen access and participation in local government

Seat 11: City Council nomination, Demonstrated interest in citizen access and participation in local government and shall have a disability as defined by the Federal Americans with Disability Act.

- Each City Council member shall nominate one candidate for seats 9 or 10, collectively, and each City Council member shall nominate one candidate for seat 11. Duplicate names shall not be accepted for any seat(s).
- The Clerk shall make appointments for all remaining seats and in the event there is more than one (1) qualified nominee for a specific seat or seats, the appointee shall be chosen by lottery performed by the City Clerk, at a publicly noticed time and location. Appointees shall only be rejected by a vote of 9 members of the City Council

- The Mayor or his or her designee, The City Clerk or his or her designee and a designated youth representative from the Youth Commission shall serve as non-voting members of the body who may participate in discussions and make advisory recommendations to the body.
- The Sunshine Task Force shall, at its request, have assigned to it an independent attorney from who is not employed with a city or county agency, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and due process will be maintained in the matters handled by the attorney.
- No voting member may serve two consecutive full terms on the body. A term of a member shall be three (3) years. Upon the first meeting, the City Clerk shall conduct a lottery for the purposes of staggering terms. With 4 seats expiring 1 year after selection, 4 seats expiring 2 years after selection and 3 seats with a regular full term. No person may serve more than two three-year terms as a member of the Commission, provided that persons appointed to fill a vacancy for an unexpired term with less than eighteen months remaining or appointed to an initial term of two or fewer years shall be eligible to be appointed to one additional three-year term. Any term served before the effective date of this Section shall not count toward a member's term limit. Any person who completes two (2) successive three year terms as a Commissioner shall be eligible for reappointment six years after the expiration of his or her term. Notwithstanding any provisions of this Section or any other section of the Charter to the contrary, the respective terms of office of the members of the Task Force who shall hold office on the first day of February, 2007, shall expire at 12 o'clock noon on said date, and the eleven persons appointed as members of the Commission as provided in this Section shall succeed to said offices on said first day of February, 2007, at 12 o'clock noon; provided that if any appointing authority has not made a new appointment by such date, the sitting member shall continue to serve until replaced by the new appointee.
- The Task Force shall advise the City Council and provide information to other City departments on appropriate ways in which to implement this chapter. The Task Force shall develop appropriate goals to ensure practical and timely implementation of open-government guidelines. The Task Force shall propose to the City Council further guidelines and recommendations to improve public access. The Task Force shall report to the City Council at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance of open-government policies and related California laws by the City, its Department Heads, Policy Bodies and agencies thereof.
- The Task Force shall conduct administrative hearings on complaints made by members of the public for alleged violations of the public meeting or public records provisions, violations of the State Public Records Act, or the State Brown Act governing public meetings. The Task Force may issue Orders of Determination following the hearing on a particular complaint. An Order

of Determination finding a violation of the above state laws shall be evidence of such violation in any other administrative or judicial proceeding.

- In the event that the Task Force Commission issues an Order of Determination finding that any entity violated open-government provisions in handling public meetings or release of public records, the Task Force may require that entity to schedule at its next regularly scheduled meeting the Order of Determination for its discussion and response.
- Unless otherwise prohibited by state law or other existing local ordinance, the Task Force may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmation, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Task Force's duties or exercise of its powers.
- In the event the Task Force finds a serious violation of the open-government provisions, the Task Force by a 2/3 vote of the entire body may seek outside counsel to prosecute the violations in the Civil Courts to the extent permitted.